

motion to compel Plaintiffs to produce documents [Doc.# 61], which remains pending.

3. Following the filing of that motion, Plaintiffs sent Defendants a letter dated May 27, 2008, proposing a timetable for production of documents that Plaintiffs did not intend to withhold. A true and correct copy is attached hereto as Exhibit A. In May Ms. Hayes made arrangements to leave her employment with Siegel, Brill, Greupner, Duffy & Foster, P.A., to take effect in June. This required new attorneys, including the undersigned, to review the file and assume Ms. Hayes' role.

4. The parties met by telephone on June 4 and June 5, 2008, to discuss outstanding discovery issues. During that meeting, which was attended by both Defendants, all parties agreed that (1) Plaintiffs would produce documents pursuant to the schedule set forth in their May 27 letter; (2) Defendant Pickle would withdraw his motion to compel [Doc.# 61], without prejudice to refile after receipt and review of Plaintiffs' production; and (3) the parties would submit a stipulated order to the Court asking to extend all unexpired deadlines in the scheduling order by 90 days.

5. The undersigned counsel for Plaintiffs agreed to draft a proposed order and send it to the Defendants by "close of business" on Friday, June 6, 2008. Before 5 P.M. on Friday, your affiant drafted and sent by fax and U.S. Mail a proposed stipulated order that reflected the parties' agreement. A true and correct copy is attached hereto as Exhibit B. Subsequent investigation reveals that the fax

number used for Defendants may have been incorrect because it was the first fax your affiant had sent them since assuming a role in this case, and an old fax transmittal sheet was used; nevertheless, your affiant has verified that copies were also deposited in the mail, postage prepaid and correctly addressed to both of the Defendants.

6. At 4:56 P.M. on that same Friday, Defendant Pickle called the undersigned affiant and asked if the stipulated order was on the way. Your affiant told him it was in the fax machine as they spoke, which was true.

7. Without further communication on the subject, on June 10, 2008, Pickle filed the present motion to extend the scheduling order dates. Your affiant became aware of the motion on June 11, 2008. That day he sent a letter to Pickle setting forth his position that the motion was not filed in good faith; that Pickle had misrepresented facts to the Court in stating that he had not received the stipulated order; and that if Pickle did not withdraw the motion and submit the stipulated order for approval, he would seek an award of Plaintiffs' attorneys fees incurred to respond to a motion for an order that Plaintiffs had agreed to. A true and correct copy of the letter is attached hereto as Exhibit C.

8. Pickle sent a response denying he had previously received the stipulated order and explaining his failure to call and ask why it had not arrived after being told it was in the fax machine as a result of his becoming "weary of hounding adverse lawyers to make sure they get their job done," and voicing his suspicion that "if it ever was in your fax machine, someone never pushed the start

button.” A copy of his letter is attached as Exhibit D. However, the letter acknowledges his receipt of the stipulated order on June 13, but Pickle *still* has not withdrawn his motion.

9. Despite Defendants’ apparent repudiation of the agreement reached at the meet-and-confer on June 4-5, 2008, Plaintiffs have adhered to the production schedule set forth in the May 27 letter. On June 13, 2008, Plaintiffs produced an additional 199 pages of non-confidential documents responsive to Pickle’s document requests. On June 20, 2008, Plaintiffs produced 1,603 pages of confidential materials responsive to those requests. The next round of production, to take place on June 27, will be the largest, consisting of documents from which confidential information – mainly donor identification – has been redacted.

10. At this writing, Plaintiffs have nearly completed a comprehensive motion intended to address the scope and relevancy of discovery requests served by Defendants, including the document requests served on Plaintiffs and the third party discovery served in other jurisdictions. The motion will be on file this week.

11. The expense in attorneys fees that will be charged to Plaintiffs as a result of responding to Defendant’s motion will exceed \$500. This is calculated based on my hourly rate of \$300, which is my customary rate.

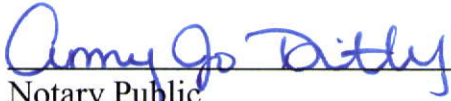
FURTHER YOUR AFFIANT SAYETH NOT.

Dated: June 24, 2008



M. Gregory Simpson

Subscribed and sworn to me
this 24th day of June, 2008.



Notary Public
My Commission Expires Jan 31, 2010

